(12)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 533

DISTRICT UNEMPLOYMENT COMPENSATION BOARD,

Petitioner,

vs.

INTERNATIONAL REFORM FEDERATION, a body corporate,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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CENTRAL DUPLICATING DIVISION—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Your petitioner, District Unemployment Compensation Board, respectfully prays that a writ of certiorari issue to review a decision of the United States Court of Appeals for the District of Columbia made on September 21, 1942, reversing a judgment in its favor which was entered in the District Court of the United States for the District of Columbia on June 17, 1941. The action in the District Court was a suit

seeking to enjoin the petitioner from requiring the respondent to make reports and to pay unemployment compensation contributions to the petitioner and seeking a declaratory judgment defining the relative rights of the parties under the District of Columbia Unemployment Compensation Act, c. 726, 49 Stat. 1888, Title 46, Section 301 (b) (7), D. C. Code. The respondent contended that it was a corporation organized and operated exclusively for charitable, religious or educational purposes within the meaning of paragraph 7 of Section 1 (b) of the District of Columbia Unemployment Compensation Act, 49 Stat. 1888, Title 46, Section 301(b) (7), D. C. Code. The findings of fact and conclusions of law which were made by the District Court are not reported but they are printed in the record, (R. 12). The opinion of the United States Court of Appeals for the District of Columbia is not yet reported but it is printed in the record, (R. 28). The dissenting opinion of Mr. Justice Miller may be found in the record, (R. 37).

Jurisdictional Statement.

The jurisdiction of this Court is based on Section 240 of the Judicial Code, 43 Stat. 938; U. S. C. A. (1940 ed.), Title 28, Section 347. Judgment was entered by the United States Court of Appeals for the District of Columbia on September 21, 1942. The petition for rehearing before a full bench of six judges was denied by the Court on October 15, 1942. The jurisdiction of the District Court of the United States for the District of Columbia was based on Title 11, Section 306, D. C. Code, 19 Stat. 253, and U. S. C. A. (1940 ed.), Title 28, Sec. 400, 48 Stat. 955, 49 Stat. 1027. The jurisdiction of the United States Court of Appeals for the District of Columbia was based on Title 17, Section 101, D. C. Code, 27 Stat. 435.

Question Presented.

The sole question involved in this case is whether or not the respondent is a corporation organized and operated *exclusively*

for charitable, religious or educational purposes within the scope and intent of paragraph 7 of Section 1(b) of the District of Columbia Unemployment Compensation Act (Act of June 23, 1936, Public No. 762—74th Congress, c. 726, 49 Stat. 1888, Title 46, Section 301, D. C. Code).

Summary and Short Statement of the Matters Involved.

The following facts all appear in the agreed statement of evidence (R. 22) and the findings of facts made by the District Court (R. 12).

The respondent in its original form was organized in 1896, under the name The International Reform Bureau. In 1923, the respondent changed its name to the International Reform Federation. The objects and purposes for which the respondent was organized as set forth in Article II, Section 1 of its Constitution are:

(1) The *promotion* of those *reforms* on which the churches sociologically agree while theologically differing;

(2) The *enactment* and enforcement of laws prohibiting the alcoholic liquor traffic;

(3) The *enactment* and enforcement of laws prohibiting the white slave traffic;

(4) The *enactment* and enforcement of laws prohibiting harmful drugs;

(5) The *enactment* and enforcement of laws prohibiting kindred evils in the United States and throughout the world;

(6) The *defense* of the Sabbath;

(7) The *defense* of purity;

(8) The *suppression* of gambling;

(9) The *suppression* of political corruption; and

(10) The substitution of arbitration and conciliation for both industrial and international war.

Article 4, Section 2 of the respondent's Constitution gives the General Superintendent power to employ and discharge a *Law Enforcement Director* and a *Legislative Superintendent* whose duties are to conduct campaigns (a) for the enactment and enforcement of laws, (b) for the adoption or repeal of constitutional amendments, state and Federal, or (c) for the election of public officials whenever, in the judgment of the Legislative Superintendent, there is a moral issue at stake of sufficient consequence to justify participation of the respondent. The respondent's Constitution further provides in Article 4, Section 5, that there shall be a *Legislative Director* who shall have charge, under the direction of the General Superintendent, of securing the enactment of good Federal and state laws effecting morals and defeating or repealing bad legislation. The offices of Legislative Superintendent and Legislative Director have been filled since January 1, 1936 (the effective date of the District of Columbia Unemployment Compensation Act) by some official of the respondent or by the General Superintendent himself.

An official pamphlet of the respondent entitled, "The Object, Methods, and Achievements of the International Reform Federation," on page 3 states that the respondent has secured the enactment of eighteen acts of Congress, and on pages 5 and 6 lists the eighteen "Legislative Victories". On page 13 of this same pamphlet thirty subjects are listed on which some type of legislation has been recommended by the respondent. These subjects include: amount of betting odds, Bible exclusion from public schools, billiard rooms open Sundays, carnival shows, change of venue to avoid honest judges, child marriages, cigarette sales to children, picture films on crime and lust, polygamous teachings, prize fighting, run away marriages and Sunday public sports, theatres and stores. At the trial in

the District Court, the respondent's General Superintendent testified that this pamphlet was still being distributed by the respondent as a representation of its past and present work.

In the report of a hearing before a committee of the House of Representatives on the establishment of a racing board, an official of the respondent testified in behalf of the respondent. His testimony is recorded on pages 44 through 56. On page 8 of the June 1937 issue of the "Twentieth Century Progress," an official organ of the respondent, there is contained an article entitled, "A Going Concern." This article states that for forty-one years the respondent has been writing laws for thirty-six states of the Union on such subjects as gambling, lotteries, red light abatement, the liquor and narcotic traffic, Sabbath observance, Bible in the public schools, marriage and divorce. In a letter dated June 2, 1939, from the respondent to the petitioner, it was stated that the thirty-four laws, to which reference had been made by an official of the respondent, were enacted by the local state and national authorities either at the respondent's suggestion or drawn by the respondent's legal department on request, as was the Federal statute prohibiting interestate transport of prize fight films.

Counsel for the petitioner and the respondent stipulated at the trial in the District Court that the respondent attempts to accomplish its objects and purposes by:

1. The *dissemination* of literature and pamphlets containing informational material, statistics and other data on its various objectives;
2. The *carrying* on of a propaganda program by active work before Congressional committees and committees of state legislatures; and
3. The *drafting* of proposed laws to be introduced in the Congress of the United States and the various state legislatures.

It was further stipulated that the respondent is not operated for profit.

At the trial in the District Court, the plaintiff offered as a witness, Clinton N. Howard, General Superintendent of the respondent, who testified that he had been connected with the respondent in one capacity or another for many years. This witness testified that the respondent has maintained headquarters in Washington, D. C. and outside the District of Columbia expending much money in Asiatic countries in the suppression of the opium traffic, having sent to foreign countries many thousands of dollars for scientific temperance purposes and for other purposes. He further testified that the respondent maintained a department of law enforcement chiefly engaged in the suppression of race track gambling, purging the mails and newsstands of erotic literature and the enforcement of moral laws in the cities, counties and states. He further testified that the respondent's literature department is made available for schools, libraries and churches and that its official magazine, now called "The Twentieth Century Progress," of which he was editor, was mailed to libraries, churches, ministers, moral leaders and *to members of the United States Congress* and *the state legislatures* when moral issues are pending. The witness further testified that the respondent was supported by voluntary contributions from members in every state of the Union, from church budgets, voluntary offerings, and the income from an endowment fund in the original sum of $50,000 provided by the will of its first General Superintendent, Dr. William F. Crafts. Mr. Howard stated that the respondent had no salaried officers except himself and an office staff of two.

The witness further testified that *part* of the work of the respondent consisted of the presentation of facts and arguments against immoral and illegal conditions throughout the various sections of the United States. He testified that *one* of the respondent's purposes was to cooperate with religious, charitable and educational organizations similarly engaged. The witness further testified that the respondent has devoted

part of its time, *part* of the time of its employees and *part* of its income in fighting for the prohibition of the alcoholic liquor traffic, the white slave traffic, traffic in harmful drugs, defense of the Sabbath and purity, the suppression of gambling and political corruption and the substitution of arbitration and conciliation for both industrial and international war. Mr. Howard further testified that the respondent, during his superintendency and before, had engaged in efforts to secure new legislation and modification of existing legislation in accordance with its charter. The witness *stated* that the efforts of the respondent to secure such legislation was not one of its chief purposes but incidental and secondary thereto and that the time and efforts used in securing new legislation had been very little in comparison with the time used in the other activities of the respondent.

It was stipulated by counsel that on July 29, 1938, the District Unemployment Compensation Board ruled that the respondent must file reports and pay contributions as an employer under the District of Columbia Unemployment Compensation Act. On June 27, 1939, upon reconsideration after an oral hearing before the full Board, at which the respondent was represented by counsel and its General Superintendent, this ruling was affirmed.

Reasons Relied Upon for the Allowance of the Writ of Certiorari.

1. The United States Court of Appeals for the District of Columbia has rendered a decision in conflict with decisions of the United States Circuit Court of Appeals for the Second Circuit in the case of *Slee* v. *Commissioner of Internal Revenue*, 42 Fed. (2d) 184, and the United States Circuit Court of Appeals for the First Circuit in the case of *Vanderbilt et al.* v. *Commissioner of Internal Revenue*, 95 Fed. (2d) 360. The facts in the instant case show conclusively that the respondent was *organized* for broad, general promotional, propaganda, legislative and political purposes and that the respondent

engages in broad, general promotional, propaganda, legislative and political *activities*. The decisions of the First and Second Circuits mentioned above hold that if these purposes and activities are shown to exist, a corporation cannot qualify under an exemption statute which requires that it shall be organized and operated *exclusively* for charitable, religious or educational purposes, even if the other purposes and activities of the corporation would admittedly fall within the exemption classification. The dissenting opinion of Mr. Justice Miller (R. 37) proves beyond any doubt that the Slee Case in Second Circuit and the instant case are undistinguishable, and that the majority decision in the instant case is in the teeth of the decisions of both the First Circuit and the Second Circuit.

2. The decision of the United States Court of Appeals for the District of Columbia involves a question of general importance. The unemployment compensation statutes in all of the forty-eight states of the United States have exemption provisions similar to the provision which was construed by the United States Court of Appeals for the District of Columbia. Twenty-five of these states have exemption provisions which are identical with the exemption provision in the instant case. The Federal Social Security Act, 49 Stat. 643, as amended, 53 Stat. 1384, U. S. C. A., (1940 ed.), Title 26, Sec. 1426 (b) (8), likewise has an exemption provision which is similar to the exemption provision in the District of Columbia Unemployment Compensation Act. In sweeping terms the Court's opinion has given a broad and all-inclusive meaning to the words "charitable purposes" and holds that that term as used in the exemption statute in the District of Columbia Unemployment Compensation Act is synonymous with the word "charity" as that word has been liberally construed in the "charitable trust" cases. In so holding the Court has lost sight completely of the purpose of Congress in enacting the District of Columbia Unemployment

Compensation Act. That purpose was to ameliorate the hardships occasioned by involuntary unemployment and to extend this beneficial social legislation to the largest possible group. The clear intention of Congress was that the words "charitable purposes" should be construed as synonymous with eleemosynary and that the employees of organizations such as the respondent should not be excluded from the benefits of this Act. It was not the intention of Congress that the employees of all organizations for which a charitable purpose can be *found,* irrespective of its other objects and activities, should be denied the benefits of this social legislation, but only where the corporation is organized and operated *exclusively* for charitable purposes. The question of obtaining revenue is immaterial when it is compared with the highly important consideration which is that the decision denies wrongfully the benefits of this Act, and, in effect, the benefits of the Federal Social Security Act and similar unemployment compensation acts throughout the states, to the employees of many organizations contrary to the intent of the legislature. The decision of the United States Court of Appeals for the District of Columbia, which drastically narrows the coverage of social legislation such as the District of Columbia Unemployment Compensation Act, will, therefore, have a serious and detrimental effect upon the whole social security program in the United States.

3. The decision of the United States Court of Appeals for the District of Columbia passes on a question of substance relating to the construction of a statute of Congress, which has not been but which should be settled by this Court. It is the first Federal Court decision involving the question of exemption of a corporation under the provisions of any unemployment compensation legislation. The decision announces general and far-reaching principles in this new field of jurisprudence which should be reviewed by this Court.

WHEREFORE, it is respectfully submitted that this petition for certiorari to review the decision of the United States

Court of Appeals for the District of Columbia should be granted.

District Unemployment Compensation Board

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions of Courts Below.

The memorandum opinion of the District Court of the United States for the District of Columbia appears in the record (R. 11). Findings of fact and conclusions of law of the District Court appear in the record (R. 12). The opinion of the United States Court of Appeals for the District of Columbia is not yet reported but it appears in the record (R. 28). The dissenting opinion of Mr. Justice Miller appears in the record (R. 37).

Statement of the Case.

The essential facts of the case are fully stated in the accompanying petition for writ of certiorari, which also contains a full statement of questions presented herewith and in the interest of brevity are not repeated here. Any necessary elaboration on the evidence and on the points involved will be made in the course of the argument.

Specification of Errors.

The United States Court of Appeals for the District of Columbia erred:

(1) In concluding that the respondent was not an employer subject to the provisions of the District of Columbia Unemployment Compensation Act.

(2) In concluding that the words "charitable purposes" as used in paragraph 7 of Section 1 (b) of the District of Columbia Unemployment Compensation Act were synonymous with the word "charity" as that term is used in the "charitable trust" cases.

(3) In concluding that the respondent's broad, general promotional, propaganda, legislative and political activities did

not prevent the respondent from being a corporation organized and operated exclusively for charitable, religious or educational purposes within the meaning of paragraph 7 of Section 1 (b) of the District of Columbia Unemployment Compensation Act.

(4) In concluding that the respondent was entitled to exemption under paragraph 7 of Section 1 (b) of the District of Columbia Unemployment Compensation Act even though the respondent does not relieve the Government of any of its burden.

ARGUMENT.

Specifically, the question involved in this case is whether or not the respondent is a corporation entitled to exemption under paragraph 7 of Section 1 (b) of the District of Columbia Unemployment Compensation Act, Act of June 23, 1936, Public No. 762—74th Congress—49 Stat. 1888, Title 46, Section 301, D. C. Code, which provision reads as follows:

> "(7) service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;"

I.

The decision of the United States Court of Appeals for the District of Columbia is in conflict with the decisions of the First and Second Circuit Courts of Appeals.

The case of *Slee* v. *Commissioner of Internal Revenue*, 42 Fed. (2d) 184, a decision of the Second Circuit Court of Appeals, is in conflict with the decision in the instant case. In the Slee case the American Birth Control League contended that

gifts made to its League could be deducted under the Federal Income Tax exemption for charitable and educational organizations, the Internal Revenue Acts of 1924 and 1926, 42 Stat. 227, U. S. C. A., (1940 ed.) Title 26, Sec. 955 (a) (10) which exemption provision is identical with the exemption provision in the instant case. The Second Circuit concluded that although the League was engaged in charitable activities, its purpose as stated in its Constitution to enlist the support of legislatures to effect repeal of laws prohibiting birth control, "unclassed" the League as a corporation organized and operated *exclusively* for charitable purposes. The Court made the following pertinent observation:

> "* * * so far * * * as its political activities were general * * * its purposes cannot be said to be 'exclusively' charitable, educational or scientific, * * *."

The only element which "unclassed" the League, which was engaged in admittedly charitable work, from being organized and operated exclusively for charitable purposes, was that one of the purposes stated in its Constitution was to repeal legislation prohibiting birth control. In the instant case the Constitution likewise sets up general legislative purposes for: (1) the enactment and enforcement of laws prohibiting the alcoholic liquor traffic (2) the enactment and enforcement of laws prohibiting the white slave traffic, (3) the enactment and enforcement of laws prohibiting harmful drugs, and (4) the enactment and enforcement of laws prohibiting kindred evils in the United States and throughout the world. (R. 13.) If the Constitution in the Slee case and the Constitution in the instant case are compared, it is apparent that the legislative objects for which the respondent is organized are much broader and more general than the legislative objects set out in the Constitution of the American Birth Control League. The only legislative element in the Slee case was the power given the League in its Constitution. No other legislative objects or activities

whatsoever were shown. In the instant case, however, in addition to the stated legislative purposes in the Constitution, there are six other elements which show the respondent's broad legislative objects and activities:

(1) The respondent has a Legislative Superintendent who conducts campaigns (a) for the enactment and enforcement of laws, (b) for the adoption or repeal of constitutional amendments, state and federal, or (c) for the election of public officials whenever, in his judgment, there is a moral issue at stake of such consequence to justify participation of the respondent. (R. 13.)

(2) The respondent has a Legislative Director who has charge of securing the enactment of good federal or state laws affecting morals and who is charged with the duty of defeating or repealing bad legislation. (R. 13.)

(3) The respondent distributes a pamphlet entitled "The Objects, Methods and Achievements of the International Reform Federation," which states that the respondent has secured the enactment of eighteen acts of Congress and lists the eighteen "Legislative Victories." This pamphlet also lists thirty subjects on which some type of legislation has been recommended by the respondent to various legislatures. (R. 13.)

(4) The respondent drafts laws to be introduced in the United States Congress and the various state legislatures. (R. 10, 14.)

(5) The respondent sends its publications to members of the United States Congress and state legislatures when moral issues are pending. (R. 23.)

(6) The respondent attempts to accomplish its purposes by carrying on propaganda and by active work before committees of Congress and state legislatures. (R. 10, 14.)

In view of this wealth of testimony, the *statement of opinion* of the respondent's General Superintendent that the activities of the appellant in efforts to secure new legislation and modification of existing legislation in accordance with its charter

was not one of its chief purposes, but incidental and secondary thereto, is not consistent with the *specific facts* in the record and is of absolutely no probative value.

Since the exemption provision in the instant case requires a corporation to be organized and operated *exclusively* for charitable purposes, these broad general legislative objects and activities cannot be overlooked and cannot be brushed aside by merely calling them ancillary or mediate. If the respondent had no broad general legislative objects or activities or if its only legislative activity was one of the collateral matters outlined by Justice Hand in the Slee case, the petitioner would agree that the respondent would not be "unclassed" by such legislative activity. In other words, if the respondent's only legislative activity was a remote or unusual appearance before the legislature to obtain exemption for itself from taxation, to obtain a change in its charter or to obtain any other collateral legislation as an incident to its success, the respondent would then be engaged in the type of legislative activity which Justice Hand terms ancillary and mediate. In the instant case, however, the respondent as an active daily program, drafts bills, makes voluntary appearances at legislative hearings, and engages in general promotional activities in order to secure legislative reforms in a very broad and almost unlimited field *"in accordance with its charter."* (R. 24.) The conclusion is unescapable that the legislative objects set out in the respondent's charter are themselves principle objects and a part of the foundation and backbone of the respondent's very existence. The fact that the legislative objects and activities of the respondent are allied to the other objects and activities does not distinguish it from the Slee case. In the Slee case the "unclassing" purpose to repeal laws prohibiting birth control was closely allied to the other objects of the League.

The case of *Vanderbilt et al.* v. *Commissioner of Internal Revenue,* 93 Fed. (2d) 360, a decision of the First Circuit Court of Appeals is likewise in conflict with the decision of the

United States Court of Appeals for the District of Columbia in the instant case. In the Vanderbilt case the National Women's Party claimed exemption from taxation as a charitable and educational organization. In principle, the Party's objects were identical with the objects of the respondent in the instant case. The statute under which the Party claimed exemption, 44 Stat. 72, U. S. C. A., (1940 ed.), Title 26, Sec. 412 (d), was identical with the exemption statute in the instant case. The object of the Party was to secure reforms which would benefit women, and, as part of this program, it engaged in the drafting of legislation and in efforts to secure enactment of legislation in furtherance of its aims. The First Circuit Court of Appeals, in holding that The National Women's Party was not entitled to exemption, stated:

> "* * * The procuring of the enactment and repeal of laws through the drafting of bills, their advocacy, the furnishing of facts and information in their support, and the payment of the costs of carrying on such activities are not educational but political. * * *"

The opinion in the instant case has sought to distinguish one of its own decisions, the case of *Hazen* v. *National Rifle Association of America, Inc.*, 69 App. D. C. 339, 101 Fed. (2d) 432, on the grounds that the promotional, propaganda and legislative activities which were shown to exist in the Hazen case did not exist in the instant case. In view of the respondent's admissions and the Court's recitation of facts, the petitioner does not believe this to be a valid distinction. The Constitution of the respondent begins by using the words "promotion" of "reform". What could be more promotional than a reform? Furthermore, the vast majority of the respondent's activities, in the final analysis, consists of promotional work.

The respondent admits that it engages in *propaganda* activities (R. 10). The activities which the respondent seeks to propagate are all of a controversial nature. The fact that certain people believe that the absolute prohibition of the use of

liquor will be helpful to mankind, does not make that issue any the less controversial. So it is with all of the reforms which the respondent seeks to promote. This Court will undoubtedly take judicial notice of the fact that legislation relating to gambling, Sabbath observance, uniform marriage and divorce laws or the prevention of brutal sports (prize fights) are controversial issues. As the dissenting opinion well states these issues would constitute a formidable party platform (R. 43.) In fact many of the issues have been a plank in party platforms in national and state elections. So much are these matters controversial and political that the respondent deemed it necessary in its Constitution to provide that its Legislative Superintendent could conduct campaigns for the enactment and enforcement of laws for the adoption or repeal of constitutional amendments, state and federal, or for the election of public officials whenever, in his judgment there was a moral issue at stake of such consequence to justify the participation of the respondent. This is the type of activity which was condemned by the United States Court of Appeals for the District of Columbia itself in the case of *Hazen* v. *National Rifle Association of America, Inc., supra.* Likewise, the Second Circuit Court of Appeals condemned this type of activity in the case of *Leubuscher* v. *Commissioner of Internal Revenue,* 54 Fed. (2d) 998. In holding that the advocacy of controversial propaganda in the form of the Henry George Doctrine was without the contemplation of the Internal Revenue Act of 1924, 43 Stat. 253, U. S. C. A., (1928 ed.), Title 26, Sec. 1095 (a) (3), the Second Circuit Court of Appeals said:

> "* * * This does not express an educational purpose, although it may be educational in some degree to those who listen to or read the theories urged. It has for its purposes the dissemination of controversial *propaganda,* which means a plan for the publication of a doctrine or system of principles." (Italics added.)

The legislative activities which appeared in the record of the case of *Hazen* v. *National Rifle Association of America, Inc., supra,* consisted solely of a statement in the Certificate of Incorporation that the organization was to encourage legislation for the establishment and maintenance of suitable ranges. No showing was made as in the instant case of additional legislative objects and activities.

The opinion of the United States District Court for the District of Columbia fails to give weight to the controlling factors which distinguish the *Girard Trust Company* v. *Comissioner of Internal Revenue,* 122 Fed. (2d) 108, from the instant case. In the Girard case the Court held that the Board of Temperance, Prohibition and Public Morals of the Methodist Church was in fact an integral part of the Methodist Church itself, which is admittedly a religious organization. When the work of the Methodist Church as a whole is considered with the legislative activities of the Board, then the legislative activities of the Board are comparatively small and do not represent a substantal part of the activity of the Methodist Church. Therefore, the Court held that the legislative activities were mediate and ancillary to the main objects of the Methodist Church. It was only upon this line of reasoning that the Court held that the Board was entitled to exemption. In the instant case the respondent is not an integral part of any religious organization. Consequently, the respondent's status must be determined solely upon its own constitution, by-laws and activities.

The decision of the United States Court of Appeals for the District of Columbia, in the instant case states that the fact that the qualifying language of the exemption provision in the Internal Revenue Act of 1934, 48 Stat. 755, U. S. C. A., (1940 ed.), Title 26, Sec. 412 (d), with regard to propaganda and legislative activities does not exist in the exemption statute in the instant case indicates that Congress intended that organzations engaged in these activities should be exempt. It is

interesting on this point to observe that the Internal Revenue Acts of 1924 and 1926, which were the statutes involved in the case of *Slee* v. *Commissioner of Internal Revenue, supra,* the Internal Revenue Act of 1924 which was the statute involved in the case of *Leubuscher* v. *Commissioner of Internal Revenue, supra,* and the Internal Revenue Act of 1926 which was the statute involved in the case of *Vanderbilt et al.* v. *Commissioner of Internal Revenue, supra,* were all *identical* with the exemption statute in the present case. In each of these cases the Courts held that the legislative objects and activities of the organizations involved prevented them from being organized and operated *exclusively* for one or more of the exempt purposes The statute which the United States Court of Appeals for the District of Columbia construed in the case of *Hazen* v. *National Rifle Association, supra,* was similar to the statute in the instant case. There the statute required that the property be used *solely* for educational purposes. No mention was made in the statutes with regard to propaganda and legislative activities. Nevertheless, the Court held that the propaganda and legislative activities were sufficient to disqualify the organization from exemption. It, therefore, appears clearly that the propaganda and legislative causes which were added to the Internal Revenue Act of 1934 were merely a legislative declaration of existing law.

II.

The decision of the United States Court of Appeals for the District of Columbia involves a question of great importance.

All of the forty-eight states of the United States have exemption provisions in their unemployment compensation laws which are similar to the exemption provision which was construed by the United States Court of Appeals for the District of Columbia in the instant case. Twenty-five of these states have exemption provisions in their unemployment compensa-

tion laws which are identical with the exemption provision in the District of Columbia Unemployment Compensation Act. The Federal Social Security Act likewise has an exemption provision which is similar to the exemption provision in the instant case. This decision of the United States Court of Appeals for the District of Columbia being one of the first of its kind in the United States and the first Federal decision involving construction of exemptions in unemployment compensation legislation, will be used as authority in connection with the administration of the state unemployment compensation laws and the Federal Social Security Act. Thus, the opinion is of great importance and will have a far-reaching effect on the administration of the social security program throughout the United States.

The Court's opinion gives a broad and all-inclusive meaning to the words "charitable purposes" and holds that a complete and controlling analogy exists between the definition of the terms "charitable purposes" which have been used for charitable trust case purposes and those charitable purposes which will exempt an organization from taxation. Charitable trusts are favorites of the Courts. Construction of all instruments which involve charitable trusts are liberal. Every presumption in favor of the validity of a trust is indulged in by the Courts. *Ould* v. *Washington Home for Foundlings*, 95 U. S. 310, 25 L. Ed. 450. Even the rule against perpetuities is relaxed in behalf of charitable trusts (1891) 3 Ch. 252; *Woodruff* v. *Marsh*, 63 Conn. 125, 26 A. 846. If the question before the Court was whether or not a trust set up for the respondent's purposes created a valid trust, the question would be an entirely different one. In such a case the petitioner would concede that some charitable purpose might be *found*—irrespective of the other purposes for which the respondent was organized and operated. All of the cases cited by the Court in its opinion and all of the cases cited by the respondent in its briefs and memoranda in the Courts below, to support the broad and all-inclusive meaning of the word "charity," are

charitable trust cases. Diligent search by counsel for the petitioner has failed to disclose any case involving tax exemption where the words "charitable purposes" have been given the broad meaning of the charitable trust cases.

On the other hand, the clear and well defined distinction which exists between cases where the question of whether a charitable trust is valid and those cases of whether an organization is to be regarded as organized and operated exclusively for charitable purposes within the meaning of tax exemption statutes have been recognized and applied in both the Federal and State Court decisions. One of the trust cases cited in the Court's opinion in the instant case, *George et al.* v. *Braddock*, 45 N. J. 757, 18 A. 881, holds valid a charitable trust to distribute the Henry George Doctrine advocating the single tax principle. In a decision by the Second Circuit Court of Appeals, *Leubuscher* v. *Commissioner of Internal Revenue, supra,* it was held that a club set up for *identical* purposes was not entitled to exemption under Section 303 (3) of the Internal Revenue Act of 1924, 43 Stat. 253, U. S. C. A. (1928 ed.), Title 26, Sec. 1095 (a) (3), which provision is identical with the exemption provision in the instant case. In the Leubuscher case, a legacy was given to the Manhattan Single Tax Club whose purpose was to advocate the Henry George Doctrine and the promotion of social intercourse "among single tax people." In denying exemption the Second Circuit Court of Appeals stated:

> "This we do not regard as *exclusively* educational within the meaning of the statute but on the contrary it tends * * * to accomplish the purpose of the person proposing it." (Italics added.)

A number of State Courts have held to the same effect as the decision of the Second Circuit Court of Appeals. The case of *Industrial Commission* v. *Wisconsin Cemetery Association* 232 Wisc. 527, 267 N. W. 750, is a case which involves specifically the construction of the exemption provision in the Wisconsin Unemployment Compensation Law which exemp-

tion statute is similar to the statute in the instant case. It was contended that since the cemetery associaion was charitable within the meaning of the trust cases, it was entitled to exemption under that statute. The Court in denying exemption said:

> "In this connection we note that there may be a distinction between cases involving gifts to cemetery associations in which a broader definition of * * * 'charitable purposes' has frequently been given, and *those involving tax or other exemptions in which these terms are held to a narrower meaning*, Hopkins v. Grimshaw, 165 U. S. 342, 41 L. ed. 739." (Italics added.)

In the case of *Scottish Rite Building Company* v. *Lancaster County*, 106 Neb. 95, 182 N. W. 574, the Scottish Rite order contended that its property was exempt because it was used exclusively for charitable purposes. The Court in denying exemption said:

> "While it is true that the thought expressed in the word 'charity' is, in the language of the poet, the philosopher or the moralist, capable of many varieties and shades of meaning, * * *. What they (the legislature) meant, common sense teaches us, was concrete, practical, objective charity, manifested in things actually done for the relief of the unfortunate and the alleviation of suffering, or in some work of practical philanthropy, as contrasted with the sentimental or ethical viewpoint."

In *Scott on Trusts*, Volume III (1939), paragraph 374.4, page 2007, in referring to the case of *Slee* v. *Commissioner of Internal Revenue, supra*, it is stated:

> "* * * Learned Hand, J., said that the league was not operated *exclusively* for charitable purposes within the meaning of the revenue statute because *one* of the purposes was to agitate for a change in law. He expressed no doubt, however, on the question whether the purposes

of promoting health and education are charitable, * * *; and undoubtedly a *trust* to promote these purposes, even though it might involve a change in law, would be a *valid charitable trust.*" (Italics added.)

Again, the distinction contended for by the petitioner was recognized in *Scott on Trusts,* Volume III (1939), paragraph 375.2, page 2025, where it is stated:

"* * * a decision that a trust or organization is not exempt from * * * taxes is not necessarily a decision that it is not charitable. A bequest in trust for a particular purpose *may be valid as creating a charitable trust, although it may be held that it is not exempt from taxation.* * * *" (Italics added.)

The decision of the United States Court of Appeals for the District of Columbia states that Congress had in mind a broad definition of the words used in the exemption statute when it used the terms "charitable purposes". No reasons are given in the opinion for this broad statement. On the contrary it seems more reasonable that if Congress had intended to use the words "charitable purposes" in the broad and all-inclusive meaning, as used in the charitable trust cases, there would be no need to include the additional enumerations in the section, because: a *religious* purpose is charitable within the meaning of the trust cases, a *scientific* purpose is charitable within the meaning of the trust cases, a *literary* purpose is charitable within the meaning of the trust cases, an *educational* purpose is charitable within the meaning of the trust cases, and the purpose *to prevent cruelty* to *children* or *animals* is charitable within the meaning of the trust cases. In other words, if Congress intended that the word "charitable," as used in this taxing statute, was to be given the same broad meaning as in the trust cases, it would have used the word "charitable" and stopped. Clearly then, the enumeration of additional charities, as that word is used in the charitable trust case sense,

shows conclusively that Congress intended that the words "charitable purposes," as used in paragraph 7 of Section 1 (b) of the District of Columbia Unemployment Compensation Act, should be restricted to its narrow meaning of eleemosynary. This obvious fact was recognized by the District Court in its memorandum opinion (R. 11) and by the dissenting opinion of Mr. Justice Miller (R. 38).

In all of the cases involving the construction of unemployment compensation legislation throughout the United States, with which the petitioner is familiar, the doctrine is that exemption should be given only when the legislative intention is clear. A very recent case, *Consumers' Research, Inc.* v. *Evans*, ___ N. J. ___, 24 A. (2d) 390, (February 13, 1942), involves construction of an exemption provision in the New Jersey Unemployment Compensation Act which exemption provision is identical with the exemption provision in the instant case. In denying exemption to this organization the New Jersey Court said:

> "The expressed legislative purpose of the unemployment compensation law is beneficent. It declares the public policy to be the economic security of the unemployed worker and sets up methods to accomplish that desired end. There should be a liberality of construction for the purpose of carrying out the legislative intent. *Exemption should only be allowed where the right to it is clear and unequivocal.*" (Italics added.)

The case of *California Employment Commission* v. *Black-Foxe Military Institute*, 42 Cal. App. (2d) 868, 110 P. (2d) 729 (1941), also illustrates this doctrine. There the Court with reference to construction of the California Unemployment Compensation Law said:

> "* * * It sets up a scheme for ameliorating the hardships of unemployment, and undertakes, * * * to pay

> unemployment benefits to those who, without fault of their own, are out of work, * * * In view of the purpose of these provisions they should not be whittled down by a narrow construction, *nor should exceptions not clearly justified by their language be engrafted upon them by judicial interpretation.*" (Italic added.)

Other cases involving construction of exemption from the provisions of unemployment compensation laws where the same rule has been enunciated are: *Young* v. *Bureau of Unemployment Compensation*, 63 Ga. App. 130, 10 S. E. (2d) 412, 415 (1940); *Maine Unemployment Compensation Commission* v. *Andro Scoggin, Jr., Inc., et al.* 137 Me. 154, 16 A. (2d) 252, 255 (1940); *and Mohawk Mills Association, Inc.* v. *Miller*, 22 N. Y. S. (2d) 993 (1940).

Obviously, the United States Court of Appeals for the District of Columbia has lost sight of the purpose of Congress in enacting the District of Columbia Unemployment Compensation Act. The clear intention of Congress was to alleviate the hardships occasioned by involuntary unemployment and to extend this beneficial social legislation to the largest possible group. If an organization is exempt from making contributions to the District Unemployment Fund, the employees of such organization are excluded from the social benefits for which this fund was created, Section 10 (a) (2), District of Columbia Unemployment Compensation Act, 49 Stat. 950, as amended, 54 Stat. 733, Title 46, Section 309, D. C. Code. Especially in view of this intention, the words "charitable purposes" should be construed as synonymous with eleemosynary and the employees of organizations such as the respondent should not be excluded from the benefits of this social legislation. It was not the intention of Congress that the large group of employees of all organizations for which some charitale purpose might be found—irrespective of the organizations' other objects and activities—should be denied the benefits of the District of Columbia Unemployment Compensation Act. Only agencies

which are organized and operated *exclusively* for charitable purposes are entitled to exemption under the statute involved in the instant case. The question of obtaining revenue is not important. It is common knowledge that the District Unemployment Fund has a reserve of over thirty million dollars at the present time and that all of the state unemployment compensation commissions have bulging reserves in their trust funds in the Treasury of the United States. What is important is that the decision of the United States Court of Appeals for the District of Columbia denies wrongfully the benefits of this social legislation to the employees of many organizations which Congress clearly intended should be included. Therefore, this decision is of general importance since it drastically narrows the coverage of social legislation such as the District of Columbia Unemployment Compensation Act and will have a serious and detrimental effect on the whole social security program throughout the United States.

III.

The decision of the United States Court of Appeals for the District of Columbia passes on a question of substance relating to the construction of a statute of Congress which has not been but should be decided by this Court.

This is the first decision by a Federal Court involving construction of an exemption provision in unemployment compensation legislation of this nature. The decision announces broad general principles of great importance and wide significance in a new field of jurisprudence. These principles have never been the subject of review by this Court. Since all of the state unemployment compensation laws and the Federal Social Security Act have exemption provisions which are similar to or identical with the one involved in this case, these principles should be reviewed by this Court.

CONCLUSION.

For the foregoing reasons it is submitted that this Court should grant a writ of certiorari as prayed in the accompanying petition.

Respectfully,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 533.

DISTRICT UNEMPLOYMENT COMPENSATION BOARD, *Petitioner*,

v.

INTERNATIONAL REFORM FEDERATION, a body corporate, *Respondent*.

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

ROBERT H. MCNEILL,
Attorney for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

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INTERNATIONAL REFORM FEDERATION, a body corporate, *Respondent.*

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Your respondent, International Reform Federation, finds no objection to Petitioner's preliminary statement or that defining jurisdiction. (Petition p. 1-2.)

We also agree to the correctness of the issue presented. (Petition p. 2-3.)

However, we seriously object to petitioner's "Summary and Short Statement of the Matters Involved". (Petition pp. 3-4.)

It is apparent from this Summary and Short Statement of the Matters Involved that petitioner endeavors to give the impression to this Court that the Respondent and its officers and agents devote themselves *generally* to political objectives and that such is Respondent's primary purpose and reason for existence.

The Record in this cause, pages 22 to 27 inclusive, shows that the parties to the proceedings agreed upon the evidence which had been submitted to the Court and it was upon this evidence that the case was disposed of by the Trial Justice plus certain exhibits. This statement of evidence represented the facts considered by the Court of Appeals.

While we do not claim that petitioner's Summary and Short Statement of the Matters Involved are unsupported by the Findings of Fact, we do suggest that there are implications and inferences in the summary not supported by the Findings of Fact and the agreed testimony (R. pp. 22 to 37), and we therefore ask the Court, in considering the petition for certiorari to consider only the Findings of Fact by the Trial Justice found on pages 12, 13, 14, 15 and 16 of the Record, and the agreed testimony found on pages 22-27 of the Record.

We call special attention to the following paragraphs from the "Defendants' Counter Statement of Evidence", Record pages 23 and 24:

> "* * * The witness, Clinton N. Howard, further testified that the Federation is supported by voluntary contributions from members in every state of the union, from church budgets and voluntary offerings, and the income from an endowment fund in the original sum of $50,000 (Fifty Thousand Dollars) provided by the will of its first General Superintendent, Dr. William F. Crafts; that at present it has no salaried offices except the witness, Clinton N. Howard, its Superintendent—Editor, and an office staff of two.
>
> "The witness, Clinton N. Howard, further testified that part of the work of the Federation consists of the presentation of facts and arguments against immoral and illegal conditions throughout the various sections of the United States; that one of its purposes is to cooperate with religious, charitable and educational organizations similarly engaged; that it has devoted part of its time and employees and income in fighting for the prohibition of alcoholic liquor traffic, the white slave traffic, traffic in harmful drugs, defense of the Sabbath and purity, the suppression of gambling and political

corruption and the substitution of conciliation for both industrial and international war.

"The witness, Clinton N. Howard, further testified that the Federation, during his superintendency and before, had engaged in efforts to secure new legislation and modification of existing legislation in *accordance with its charter.* The witness stated that the efforts of the Federation to secure such legislation *was not one of its chief objects but incidental and secondary thereto, and that the time and efforts used in securing new legislation had been very little in comparison of the time used in the other activities of the Federation.*" (Italics ours)

The above summary quoted from the Record epitomizes the purpose of respondent and shows its activities for more than forty-six years to have been those exclusively, religiously and continuously devoted to objectives of the highest morality.

REPLY TO REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI.

I.

Petitioner contends that the instant decision is "in conflict with decisions of the United States Circuit Court of Appeals for the Second Circuit in the case of *Slee* v. *Commissioner of Internal Revenue* (42 Fed. (2d) 184), and the United States Circuit Court of Appeals for the First Circuit in the case of *Vanderbilt, et al.* v. *Commissioner of Internal Revenue,* 93 Fed. (2d) 360.

We say that this contention is utterly unsupported by the two decisions cited.

First, in our Brief in the Court of Appeals we analyze these decisions, as did Petitioner's counsel, and they were fully analyzed in the Opinion of the Court of Appeals.

The principles announced by Judge Hand in the Slee case, and by Judge Bingham in the Vanderbilt case, sustain our contention that Respondent was exempt from the D. C. Unemployment tax. While both taxpayers in those

cases were held taxable, both Courts defined cases where exemptions would apply and thereby supported our contentions which are sustained by the decision of the Court of Appeals for the District of Columbia that Respondent here comes within the exemption.

The Slee case involved a donation to the American Birth Control League to be used to carry on the general objective of the League, which was the spreading of propaganda in favor of birth control. Birth control, as is widely known, is a controversial subject, and one involved in doubt as to the ethics of the propaganda. The effort to popularize the Birth Control League's program was its main objective, and the Court, upon consideration of the matter of a donation made to the Birth Control League, held that the League must pay the unemployment compensation tax.

However, in the Court's opinion in the Slee case all distinctions for which we are now contending and which are established by the evidence in our case were referred to by the Court. And we submit that had these conditions existed in the Slee case the Birth Control League would have been found to be exempt from tax. This is beyond serious question.

In Judge Hand's opinion in the Slee case, speaking of the American Birth Control League, he said:

> "The only part of its activities which can be thought to touch upon legislation is in directing persons how best to prepare proposals for changes in the law, and in distributing leaflets to legislators and others recommending such changes * * *" (page 185).

He further said on the same page:

> "That the League is organized for charitable purposes seems to us clear, and the Board did not find otherwise. A free clinic, or one where only those pay who can, is a part of nearly every hospital, a recognized form of charitable venture."

The above statements apply to the Respondent in this case.

Now come the distinguishing points in Judge Hand's opinion. On page 185, towards the bottom of the page, this Court will observe that Judge Hand felt that the Birth Control League had no objective except a political objective, that is, the securing of new legislation or modification of existing prohibitive legislation, the effect of which would free physicians and permit them to give information to prospective mothers whereby birth control could be realized. *This was the general objective.* That is, it had no other objective according to its activities and charter. It was distinctly a political organization, undertaking to change the mental attitude and political leanings of the public on a general subject, controversial in character. As to such an organization, Judge Hand said:

> "Political agitation as such is outside the statute, however innocent the aim * * * Controversies of that sort must be conducted without public subvention."

After the above quotation Judge Hand proceeds to define a charity which is not taxable in the following terms:

> "Nevertheless, there are many charitable, literary and scientific ventures that as an *incident to their success require changes in the law.* A charity may need a special charter allowing it to receive larger gifts than the general laws allow. It would be strained to say that for this reason it became less exclusively charitable, though much might have to be done to convince legislators." (Italics ours.)

Likewise the case relied upon by Petitioner, *Vanderbilt* v. *Commissioner of Internal Revenue,* 93 Fed. (2d) 360, is distinctly distinguishable from the case at bar.

In the Vanderbilt case Mrs. Belmont bequeathed to the National Woman's Party — a political organization— $100,000 in the following language:

> "Third. I give and bequeath to National Woman's Party, a corporation organized and existing under and by virtue of the Laws of the District of Columbia, United States of America, the sum of one hundred thousand ($100,000) dollars" (p. 361).

In the constitution and by-laws of the National Woman's Party is found the following clause:

> "The object of this organization shall be to secure for women complete equality with men under the law and in all human relationships."

It will be noted from an examination of the conclusions of the Court that the National Woman's Party was a political organization and that its main objective, as defined by the clause in its constitution just quoted, was political, and that the purpose of its officers and directors and of the corporation itself was to secure for women complete equality with men under the law and in all human relationships. It worked for this objective and none of its work was of a class deemed by the law to be charitable. It was a *political organization.* Further, the Board of Tax Appeals found as a fact from the evidence (and the Court of Appeals adhered thereto) that the corporation was not operated exclusively for educational purposes (page 362).

In this case also the Second Circuit Court of Appeals approved its previous finding in the Slee case, which we have quoted from above, and held that, "*As its Political activities were general,* it seems to us, regardless of how much we might be in sympathy with them, that its purposes cannot be said to be 'exclusively' charitable, education or scientific" (93 Fed. 2d 362). Here it will appear to the Court that the activities of the National Woman's Party along political lines were general and not "mediate." "ancillary," "incidental," or special as in the case of the Respondent herein.

A careful examination of the majority of opinions of the Court of Appeals (page 28 of the Record) will further show how carefully cases such as that of respondent are distinguished from the fact in the Slee and Vanderbilt cases.

The United States Circuit Court of Appeals for the Third Circuit in the case of *Girard Trust Company* v. *Commissioner of Internal Revenue,* 122 Fed. (2d) 108, approved the principles we are contending for here. This Court thor-

oughly analyzed the contentions made by Petitioners here and found them unsustained by principle or authority.

Secondly, the Vanderbilt and Slee cases would not be in conflict with the decision of the United States Court of Appeals of the District of Columbia or controlling, even if the Second Circuit had construed Acts, under scrutiny, contrary to the construction of the Act here, for the reason stated in *Girard Trust Company* v. *Commissioner of Internal Revenue,* 122 Fed. (2d) 108,—because those cases were decided prior to the limitation made by Congress in the 1934 statute which added to the Revenue Act of 1926 the phrase,

> "And no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation" (26 U. S. C. A. 3303-A)

and which recognized that in the Revenue Act of 1926 (which is similar to the Act here), Congress did not intend to and did not impose a limitation upon charitable corporations carrying on propaganda or influencing legislation in order to carry out their principal objects. In fact in 1934 Congress intended to and did amend the Act of 1926 by limiting the extent of charitable corporation's activities in carrying on propaganda and influencing legislation by adding the above quoted phrase. Until the Act here involved is amended by adding a similar phrase, the limitation will not be added by the Court. In the Girard case, *supra,* the Court stated,

> "A limitation, if any, upon the deduction granted in general terms of bequests to religious bodies is for Congress to make and Congress has since made it in the 1934 Statute" (but not in our Statute). "Such limitations not having been imposed by legislation, it is not for a court or administrative officer to impose it. The decision of the Board of Tax Appeals is reversed" (pages 110, 111).

II.

We cannot deny the general statement of petitioners (Page 8 of the Petition) that the decision in this case involves a question of general importance, but in view of the

fact that the question has been decided repeatedly, it is not important that this Court be burdened with a reconsideration and review of these decisions.

As we have shown above, there is no conflict in the opinions of the various Circuit Courts of Appeals, the Second and Third Circuits, or the United States Court of Appeals for the District of Columbia, all these decisions are in harmony in principle. Therefore, the mere fact that this case relates to an important question of taxation in no sense indicates that it should be certified by this Court.

This Court has also approved, in principle, the above decisions of the Second and Third Circuits and the U. S. Circuit Court of Appeals for the District of Columbia—

U. S. v. *Pleasant,* 305 U. S. 357.
Old Colony Co. v. *Pleasant,* 301 U. S. 379.

In these cases this Court held that taxing statutes, as to bequests and income of charitable trusts should be liberally construed.

In their Petition herein, the taxing officials request that this Court give these statutes a strict construction. Classing as "charitable," only those institutions that might be engaged in alms giving or like services. This is directly in the teeth of numerous Federal decisions.

Such also, as argued below, is the uniform holding of the text authorities:

14 C. J. S., Sec. 1, p. 412.
5 R. C. L., Sec. 119, p. 374.

III.

We submit that there is nothing to Petitioner's Point III and we refrain from arguing the same or citing authorities.

Respectfully submitted,

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Attorney for Respondent.